

Appl. No. 09/645,593
Amdt. Dated October 21, 2003
Reply to Office action of May 21, 2003

REMARKS/ARGUMENTS

By the present amendment, claims 1, 2, 7, 8 and 13-15 have been amended and claims 3-5 and 9-11 have been deleted rendering claims 1, 2, 6-8, 12-23 pending in the application. The amendments to the claims have been made without prejudice and without acquiescing to any of the Examiner's objections. Applicant reserves the right to pursue any of the deleted subject matter in a further divisional, continuation or continuation-in-part application. No new matter has been entered by the present amendment and its entry is respectfully requested.

The Official Action dated May 21, 2003 has been carefully considered. It is believed that the amended claims and the following comments represent a complete response to the Examiner's rejections and place the present application in condition for allowance. Reconsideration is respectfully requested.

35 USC §112, First Paragraph

(a) Written Description

The Examiner has rejected to claims 1-23 under 35 USC §112, first paragraph as failing to comply with the written description requirement. In response, the claims have been amended, without prejudice, in order to specify that the seed-preferred promoter comprises: (i) the nucleic acid sequence as shown in Figure 4 (SEQ.ID.NO.:8) wherein T can also be U; (ii) a nucleic acid sequence that is complementary to the nucleic acid sequence of (i); or (iii) a nucleic acid sequence that hybridizes to the nucleic acid sequence of (i) or (ii) under stringent hybridization conditions, wherein said conditions comprise hybridizing in 6.0 x sodium chloride/sodium citrate (SSC) at about 45°C followed by a wash of 2.0 x SSC at 50°C.

Applicant submits that the specification provides a written description of the claims as currently pending and respectfully requests that the objections to the claims under 35 USC §112, first paragraph as not complying with the written description requirements be withdrawn.

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(b) Enablement

The Examiner has rejected claims 1-23 under 35 USC §112, first paragraph because the specification, while being enabling for an isolated nucleic acid molecule comprising a nucleic acid sequence comprising bases 1-2040 of SEQ ID NO:8 having seed-preferred promoter activity, does not reasonably provide enablement for a nucleic acid homologue, a nucleic acid analog or an isolated nucleic acid molecule that hybridizes under stringent hybridization conditions to a nucleic acid molecule having the sequence of SEQ ID NO:8, compositions comprising same or method of using same.

As mentioned above, the claims have been amended in order to specify that the flax seed-preferred promoter comprises: (i) the nucleic acid sequence as shown in Figure 4 (SEQ.ID.NO.:8) wherein T can also be U; (ii) a nucleic acid sequence that is complementary to the nucleic acid sequence of (i); or (iii) a nucleic acid sequence that hybridizes to the nucleic acid sequence of (i) or (ii) under stringent hybridization conditions, wherein said conditions comprise hybridizing in 6.0 x sodium chloride/sodium citrate (SSC) at about 45°C followed by a wash of 2.0 x SSC at 50°C. Therefore, the claims are now limited to the promoter of SEQ ID NO:8 as well as its complementary strand and sequences that hybridize under the specified conditions. The conditions of the stringent hybridization have support in the application on page 11, lines 12-14. Accordingly, one of skill in the art can readily determine whether or not a specific nucleic acid sequence hybridizes to the nucleic acid sequence shown in SEQ ID NO:8 under the specified conditions.

In view of the foregoing, we respectfully request that the objection to claims under 35 USC §112, first paragraph as lacking enablement be withdrawn.

35 USC §112, Second Paragraph

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The Examiner has objected to claims 2, 3, 5, 11, 14 and 15 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

With respect to claim 2, the Examiner comments that the term "expression characteristic" is unclear. In response, claim 2 has been amended in order to specifically list expression characteristics that may be conferred.

The Examiner has objected to claims 5, 11, 14 and 15 in view of the phrases "homology" and "hybridizes under stringent hybridization conditions". In response, claims 5 and 11 have been deleted and claims 14 and 15 have been amended in order to delete reference to homologous sequences. As mentioned previously, claims 14 and 15 have also been amended in order to specify the stringent hybridization conditions.

In view of the foregoing, we respectfully request that the objection to claims under 35 USC §112, second paragraph be withdrawn.

35 USC §102

The Examiner has objected to claims 1-3, 5-9 and 11-23 under 35 USC §102(b) as anticipated by Jain et al. (WO 98/18948, published 7 May 1998).

As previously mentioned, the claims have now been amended in order to specify the sequence of the seed-preferred promoter. As the sequence shown in SEQ ID NO:8 is not disclosed in Jain et al., Jain et al. cannot be said to anticipate the claims.

In view of the foregoing, we respectfully request that the objections to the claims under 35 USC §102(b) be withdrawn.

The Commissioner is hereby authorized to charge any deficiency in fees (including any claim fees) or credit any overpayment to our Deposit Account No. 02-2095.

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In view of the foregoing, we submit that the application is in order for allowance and an early indication to that effect would be greatly appreciated. Should the Examiner like to discuss the matter, he is kindly requested to contact Micheline Gravelle at 416-957-1682 at his convenience.

Respectfully submitted,

BERESKIN & PARR

By 

Micheline Gravelle
Reg. No. 40,261

Bereskin & Parr
Box 401, 40 King Street West
Toronto, Ontario
Canada M5H 3Y2
Tel: 416-957-1682
Fax: 416-361-1398

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